

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No. 1118 of 2016
and
C.M.P. No. 6139 of 2016

D.Anandhi

..Petitioner

Versus

1. N.Devadass
2. The Sub-Registrar,
Tambaram Taluk,
Tambaram.
3. The Revenue Divisional Officer,
Tambaram Taluk,
Tambaram.
4. The Tahsildar,
Tambaram Taluk,
Tambaram.
5. The District Collector,
Kancheepuram District,
Kancheepuram.

..Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.10.2015 made in I.A. No.835 of 2015 in O.S. No.11 of 2013 on the file of the learned District Munsif, Tambaram.

For Petitioner	:	Mr. N.Manokaran
For R1	:	No Appearance
For RR2 to 5	:	Mr.T.Jayarama Raj, G.A.

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 27.10.2015 made in I.A. No.835 of 2015 in O.S. No.11 of 2013 on the file of the learned District Munsif, Tambaram.

2. The petitioner herein has filed a suit in O.S.No.211 of 2013 for declaration to declare the cancellation of settlement deed executed by the 1st respondent / 1st defendant is null and void and consequential permanent injunction and mandatory injunction against the suit property.

3. The 1st respondent herein has filed an application in I.A.No.835 of 2015 to grant a leave to examine the Doctors S.Aravindan (Psychiatry) and C.Moorthy (Cardiologist) as DWs 1 & 2 before examining himself as witness. The 1st respondent herein stated that he was affected by mental depression from June 2010. During the execution of the settlement deed in favour of the plaintiff dated 15.09.2011, the 1st respondent herein was unsound. He took psychiatric treatment and recovered in the year 2013. Thereafter, he came to know that during the period, in which he was mentally unstable, settlement deed was executed and he cancelled the settlement deed. The 1st respondent herein has filed an application to examine the aforesaid Doctors before him as witness in the said suit. The Trial Court has allowed the said application. Challenging

the said order, the petitioner/plaintiff has filed the present Civil Revision Petition.

4. According to the petitioner, the Court below has not considered Order 18 Rule 3(a) of CPC, which is extracted below:

"Order 18: Hearing of the suit & examination of witnesses:

.....

Rule 3-A. Party to appear before other witnesses.-

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

As per the above provision, the Court has to specify the reasons for examining the party before the other witness.

5. According to the Civil Revision Petitioner, the 1st respondent is in stable state of mind from February 2013, and therefore the 1st respondent can himself be examined as first witness, and thereafter, the Doctors can be examined. Hence, this Civil Revision Petition may be allowed and the impugned order of the the Court below is liable to be set aside.

6. Notice has been served on the 1st respondent, but none appeared for the 1st respondent.

7. The learned Government Advocate appearing for the respondents 2 to 5 submitted that the Court has power to allow the application to examine a party before a witness.

8. In the present case on hand, the contention of the respondent that he was mentally unstable from 2010 to 2013. Taking into consideration the said facts, the Doctors could be examined before the 1st respondent / 1st defendant in the said suit.

9. In the light of Order 18 Rule 3-A CPC, the Court below has power to grant permission to the parties to examine himself before the parties are examined as witness.

10. The learned counsel for the petitioner / plaintiff relied upon the decision of a Division bench of this Court in the case of **Ravi and another vs. Ramar**, reported in 2008 (1) CTC 36 and the relevant paragraphs of the same are extracted as follows:

"20. Keeping in view the principle that procedural rules are normally considered as directory unless the consequence of not following the procedure is specifically indicated, it would be appropriate to hold that the Court can give permission to the party to examine himself at a later stage even if no such permission had been sought for at the very threshold. As a matter of fact, save and except in one or two

decisions of the single Judges of the Madras High Court, most of the High Courts, including many of the Judges of Madras High Court, have preferred to follow a more liberal path of laying down the proposition that even where such permission has not been sought for at the threshold, such permission can be granted for relevant reasons at a later stage. This is not to suggest that as and when such petition is filed the Court is bound to grant such permission merely for the asking. Obviously, the Court is required to consider the matter in its proper perspective and is required to find out as to why the party could not examine himself at the beginning and also as to why the application for seeking such permission was not filed at the threshold. If the Court finds that the party deliberately held himself back with a view to fill-up the lacunae in the evidence at a later stage, obviously such permission is to be refused irrespective of the fact whether permission is sought for at the threshold or at a later stage. If convinced on such aspects, the Court may permit the party to examine himself as a witness at a later stage. What is important is recording of reasons and obviously it means reasons which are germane to the matter, that is to say, relevant for the purpose.

.....

22. The amendment was introduced with a view to ensure that the party examining himself as a witness at a later stage should not be permitted to fill-up the lacunae in the evidence adduced from his side. Where the Court comes to a conclusion that the party had deliberately with-held himself to be examined as a witness at a later stage with a view to fill-up the lacunae in the evidence, obviously permission cannot be granted to such a party to examine himself at a later stage.

This is a relevant consideration where the application is filed, seeking permission to examine him at a later stage, either at the threshold of examination of other witnesses or subsequently after examination of all or some of the witnesses. The real test is to find out whether there was a genuine cause for which the party was not examined as a first witness. If for some genuine reasons, which could not be foreseen initially, a party wants to examine himself at a later stage, permission can be granted. Therefore, the overriding consideration is not whether the party makes the application at the threshold or at the subsequent stage, but whether for a genuine and germane reason the party is required to be examined at a later stage notwithstanding the fact that he was not examined as a witness at the beginning. This seems to be the essence of the different decisions of different High Courts. What would be the relevant facts and circumstances, obviously cannot be laid down in a strait jacket formula and obviously it is for the court concerned to deal with the matter in judicious manner. The reference is accordingly answered. The civil revisions shall now be placed before the learned single Judge for disposal, in accordance with law."

11. In the light of the aforesaid judgment and the provisions of the Code of Civil Procedure, in the present case, the 1st respondent has not satisfied the Court with the reasons to examine the Doctors S.Aravindan and C.Moorthy as witness before the 1st respondent / 1st defendant in the said suit. Therefore, this Court has no hesitation to set aside the impugned order

12. In the light of the above facts and circumstances of the case, the impugned order of the court below is set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet:Yes/No

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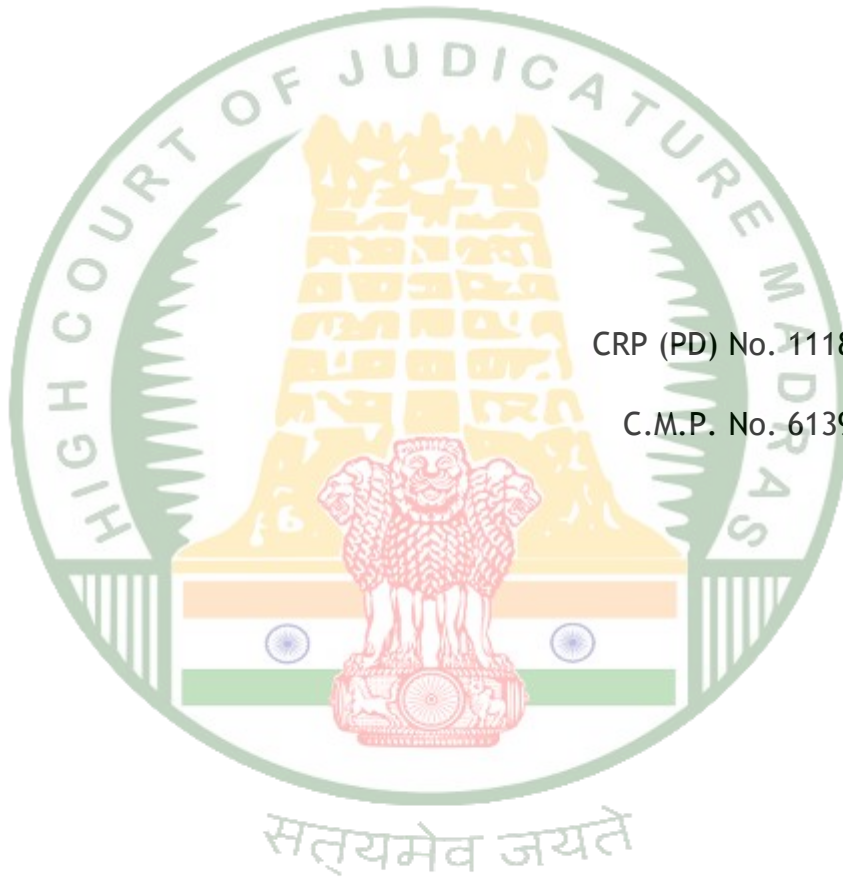


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